

# Standard Master Services Agreement ("Terms of Service")

IMPORTANT-READ CAREFULLY: These Terms of Services / Master Services Agreement (this "MSA", "Terms of Service") is binding and enforceable between you ("Customer") and 1Point Interactive ("1Point", "1PointMail") These Terms of Service / Master Services Agreement govern Customer's access to and use of 1Point's website (the "Site"), any information, text, graphics, or other materials created and/or provided by 1Point and appearing on the Site (the "Content"), Products (as defined below), Platform (as defined below) and any Services (as defined below) and/or software provided through the Site or by 1Point (the "Services"). These Terms of Service / Master Services Agreement limit 1Point's liability and obligations to Customer, grant 1Point certain rights and allow 1Point to change, suspend or terminate Customer's access to and use of the Site, Content, Files and Services. Customer's access to and use of the Site, Content, Files and/or Services are expressly conditioned on Customer's compliance with these Terms of Service / Master Services Agreement. By accessing or using the Site, Content, Files and/or Services Customer agree to be bound by these Terms of Service / Master Services Agreement.

CUSTOMER UNDERSTANDS THAT BY CLICKING THE ONLINE SUBSCRIPTION FORM "I AGREE" BUTTON OR SIGNING THIS MSA, BY USING THE SITE, CONTENT, FILES AND/OR SERVICES OR CUSTOMERS PAID ACCOUNT CUSTOMER IS AGREEING TO BE BOUND BY THESE TERMS OF SERVICE / MASTER SERVICES AGREEMENT. IF CUSTOMER DOES NOT ACCEPT THESE TERMS OF SERVICE / MASTER SERVICES AGREEMENT IN THEIR ENTIRETY, CUSTOMER MAY NOT ACCESS OR USE THE SITE, CONTENT, FILES OR SERVICES. Customer is specifically agreeing to a limit of 1Point's obligations and liability as referenced in the following Sections: Warranties & Disclaimers and Liability Limitations. Further, Customer is specifically agreeing to arbitration, on an individual basis, in the event of a dispute between Customer and 1Point in the following Section: Controlling Law, Arbitration, Class Action Waiver and Jurisdiction. If Customer agrees to these Terms of Service / Master Services Agreement on behalf of a business, Customer represents and warrants that Customer has the authority to bind that business to these Terms of Service / Master Services Agreement and Customer's agreement to these terms will be treated as the agreement of the business. In that event, "you", "your", "Customer" and "Customer's" will refer and apply to that business. Use of the Site, Content, Platform, Products and Services is at Customer's Own Risk and is Available "AS IS"

This Master Services Agreement includes the General Terms and Conditions set forth on the following pages and all terms and conditions set forth in all Product Addenda specific to the Products purchased as part of Customer's subscription. Product Addenda, as well as the most current version of this Master Services Agreement, are available for review at (<http://www.1pointinteractive.com>). The parties' relevant Order Forms or Online Subscription executed by 1Point and Customer the "Parties". The Parties' complete agreement with respect to the subject matter set forth in the Order Forms, or Online Subscription executed by the Parties during the Term includes this Master Services Agreement (including all applicable Product Addenda) and all such Order Forms or Online Subscription, all of which shall be hereinafter referenced as the "Agreement". Customer expressly agree that the terms and conditions of this Master Services Agreement shall govern all Products and Services provided to Customer during the Term and are a material part of 1Point's agreement to provide such Products and Services, whether or not the same is made express at the time of provision. 1Point hereby agrees to make the Products and/or Services described in each Addendum

or subscription hereto available to Customer and Customer agree to purchase such Products and/or Services from 1Point, subject to the terms and conditions of the Agreement. 1Point Interactive reserves the right to revise the terms of this agreement at any time.

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

The following Definitions are used throughout the "Terms of Service" / "Master Services Agreement" document.

**"Affiliate"** shall mean, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, where "control" (or variants of it) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.

**"Applicable Law"** shall mean any international, federal, state, or local statute, regulation, or ordinance, expressly including without limitation those relating to individual privacy or the distribution of email and other one-to-one digital messages.

**"Confidential Information"** shall have the meaning set forth in [Section 6](#).

**"Data"** shall mean all data and other information, including metadata, provided by or on behalf of Customer to 1Point, uploaded by Customer to the Platform or to a Product, or generated by Supplier pursuant to or in connection with this Agreement for processing or otherwise in the performance of this Agreement.

**"Malicious Code"** shall mean viruses, worms, time bombs, Trojan horses and other harmful or destructive code, files, scripts, agents or programs.

**"Subscription"** a paid license to use 1Point Product for a defined period of time, typically 1 month.

**"Subscription Term"** shall mean the subscription period set forth on an applicable Order Form and / or Online Subscription Form. "Term" shall have the meaning set forth in [Section 10.1](#).

**"Platform"** shall mean 1Point's cross-channel interactive marketing platform.

**"Product"** shall mean a specific feature (e.g., Email, SMTP, Mobile, SMS, MMS, Data Encryption, Data Transmission, Data Access, Data Storage, Social, Sites, Micro Sites or Personal URLs ("PURLS")) purchased as part of Customer's subscription to the Platform.

**"Services"** shall mean the implementation, integration, consulting, and/or similar services described in a Statement of Work or Subscription and provided by 1Point employees and subcontractors in support of Customer's use of the Platform or a Product.

**"Order Form"** shall mean the ordering documents for Customer's purchases of Products or Services from 1Point that are executed by the parties from time to time, which shall be governed by the terms of this MSA.

**"Start Date"** shall mean the date on which 1Point shall make the Platform, or a Product, available to Customer as set forth in an applicable Order Form or Subscription.

**"Statement of Work" or "SOW"** shall mean the document describing the scope and schedule of Services, if any, to be performed by 1Point for Customer. An SOW may be a stand-alone document or incorporated into an Order Form or Subscription and shall be governed by the terms of this MSA.

**2. ORDERS BY CUSTOMER AFFILIATES.** This MSA enables Customer, on behalf of itself or one or more of its Affiliates, and/or any of its Affiliates, on their own behalf, to execute Order Forms or SOWs with 1Point under the terms hereof. Each Order Form and/or SOW executed by a Customer Affiliate constitutes an independent contract between 1Point and the Customer Affiliate executing the Order Form and/or SOW (a "Participating Affiliate"). Customer agrees that execution of an Order Form or SOW by a Participating Affiliate shall represent such Participating Affiliate's independent acceptance of, and agreement to be bound by, the terms and conditions of this MSA.

### **3. USE OF THE PLATFORM**

**3.1 1Point Responsibilities.** 1Point shall: (a) make the Platform available to Customer in a manner that is consistent with generally accepted industry standards; (b) use commercially reasonable efforts to ensure that the Platform performs in material compliance with any documentation or user guides provided to Customer; (c) provide standard support to Customer at no additional charge; (d) use commercially reasonable efforts to make the Platform available 24 hours a day, seven days a week, except for: (i) planned downtime (for which 1Point shall make good faith efforts to give at least five business days' notice and which 1Point shall schedule to the extent reasonably practicable during the weekend hours from 10:00 p.m. ET Friday to 4:00 a.m. ET Saturday); or (ii) any unavailability caused by a Force Majeure Event; and (e) comply with and conform to all Applicable Laws in the performance of its obligations under this Agreement.

**3.2 Customer Responsibilities.** Customer is responsible for all activities that occur in Customer's account(s). Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Data; (b) prevent unauthorized access to, or use of, the Platform, and notify 1Point promptly of any such unauthorized access or use of which Customer or any of its Affiliates become aware; (c) agrees not to disclose Customer's password(s) to any third party; (d) ensure that a user login is only used by one person (a single login shared by multiple persons is not permitted); (e) maintain the security of its users' account names and passwords; (f) inform 1Point immediately of any unauthorized use of Customer's password(s) or account(s); and (g) comply with Applicable Law with respect to Data and when using the Platform.

**3.3 Use Guidelines.** Customer shall not, and shall not permit any third party to: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform available to any third party except as permitted by this MSA; (b) send via, upload to, or store within the Platform any Malicious Code; (c) interfere with or disrupt the integrity or performance of the Platform or any parties' or third party's data contained therein; or (d) attempt to gain unauthorized access to the Platform or its related systems or networks.

### **4. FEES & PAYMENT**

**4.1 Fees & Expenses.** Customer shall be obligated to pay all fees specified in all Order Forms and/or Online Subscription Forms and/or SOWs and/or Subscriptions executed under this MSA. Customer shall reimburse 1Point for all reasonable, pre-approved travel and out-of-pocket expenses incurred in connection with 1Point's performance of Services. 1Point reserves the right to terminate and/or modify the terms of use of Customer's Account at any time.

1Point may automatically invoice Customer or bill Customer's credit card each month or year on the calendar day corresponding to the commencement of Customer's paid account. Customer acknowledges that the amount billed each month or year may vary for reasons that include changes due to promotional offers or changes in Customer's account. Customer authorizes 1Point to charge Customer's credit card or banking account for such varying amounts. 1Point may also periodically

authorize Customer's credit card in anticipation of account or related charges. All fees and charges are nonrefundable and there are no refunds or credits for partially used periods.

In the event of any change in fees and charges, 1Point will give Customer 30 days advance notice of these changes by email. If Customer wants to use a different credit card or if there is a change in Customer's credit card validity or expiration date, Customer may edit their information by contacting 1Point directly. If Customer's credit card reaches its expiration date, Customer's continued use of the 1Point constitutes Customer's authorization for 1Point to continue billing that credit card and Customer remains responsible for any uncollected amounts. It is Customer's responsibility to keep Customer's contact information and payment information current and updated.

Overall IP health will be monitored regularly by the 1Point team. List hygiene services are available to help with good sending practices and may be required upon initiation of your service. Should the 1Point team find that dedicated IP address(es) have been listed on one or more Email Blacklists, the Customer may be subject to account termination and/or a \$1,000 fee per cluster of 4 IPs or \$250 per single IP.

**4.2 Overdue Payments.** Customer's failure to timely pay any fees and expenses that are not the subject of a good faith dispute of which Customer notifies 1Point in a detailed writing ("Undisputed Fees") shall constitute a material breach of the Agreement. If any amounts for which Customer is responsible are overdue, then 1Point may provide Customer with written or electronic notice of the same (a "Late Notice"). If Customer fails to pay all overdue amounts within 10 business days after Customer's receipt of the Late Notice, then 1Point may, in addition to any of its other rights or remedies, suspend access to the Platform and/or Products and/or its provision of Services until all overdue amounts are paid in full. If Customer fails to pay all overdue amounts within 30 days after Customer's receipt of the Late Notice, then 1Point: (a) may terminate the Agreement, including all outstanding Order Forms and SOWs; (b) shall be entitled to recover from Customer (i) interest on all overdue amounts at the lower of a rate of 1.5% per month or the maximum rate permitted by law ("Interest"); and (ii) all fees and costs (including reasonable attorneys' fees, court costs and collection agency fees) incurred in seeking collection of such overdue amounts ("Collection Costs"). Additionally, non-payment for services rendered will result in customer loss of data control. If account is not remedied within 90 days of Past Due status, 1Point will maintain control and ownership of data in perpetuity.

**4.3 Taxes.** Unless otherwise stated, 1Point's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on 1Point's net income or property. If 1Point has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides 1Point with a valid tax exemption certificate authorized by the appropriate taxing authority.

**4.4 Canceling Your Account.** Customer's 1Point paid account will continue in effect and will auto renew unless until Customer cancels the paid account or 1Point terminates it. Customer must cancel the paid account before it renews each month or year in order to avoid billing of the next month's or year's fees. 1Point paid accounts are prepaid and are non-refundable. 1POINT DOES NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL MONTHS OR YEARS OR SUBSCRIPTION TERMS. Except as specifically set forth herein or on the Site, there are no refunds for any fees paid. CUSTOMER IS SOLELY RESPONSIBLE FOR TERMINATING THE PAID

ACCOUNT AND THIS AGREEMENT. 1POINT IS NOT RESPONSIBLE FOR CUSTOMER'S FAILURE TO PROPERLY TERMINATE THE PAID ACCOUNT AND THIS AGREEMENT OR FOR ANY CREDIT CARD OR OTHER CHARGES OR FEES CUSTOMER INCUR AS A RESULT OF CUSTOMER'S FAILURE TO PROPERLY TERMINATE THE PAID ACCOUNT AND THIS AGREEMENT.

During the first 14 days of service, Customer may cancel the Paid Account at any time. After the first 14 days of service, 1Point requires a 30 day written notice for cancellation of service. At the time of cancellation Customer's Paid Account will be billed for any and all existing and/or outstanding Product(s) and Service(s) up to the effective cancellation date. During the cancellation period Customer will be billed for any Product(s) or Service(s) consumed during the cancellation period.

1Point will bill the monthly or yearly fees associated with Customer's Paid Accounts via Invoice or to the credit card Customer provided to 1Point during registration (or to a different credit card if Customer changes account information).

By signing up for a 1Point Paid Account and providing 1Point with payment account information, Customer hereby agree to these payment terms and conditions.

## **5. PROPRIETARY RIGHTS**

**5.1 Restrictions.** Customer shall not, and shall not permit any third party to: (a) modify, copy or create derivative works based on the Platform or Products; (b) frame or mirror any content forming part of the Platform or Products, other than on Customer's or its Affiliates' own intranets or otherwise for their own internal business purposes as allowed under this Agreement; (c) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Platform or Products; or (d) access the Platform or Products in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform or Products.

**5.2 1Point's Intellectual Property.** 1Point reserves all rights, title, and interest in and to the Platform, the Products, and the Services, including all related patent, copyright, trademark and other intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. In addition, 1Point shall own all rights, title, and interest, including all intellectual property rights, in and to any improvements to the Platform or Products, including without limitation those relating to any new programs, upgrades, modifications, refinements, feedback, comments or enhancements (collectively, "Improvements") developed by or for 1Point in connection with providing the Platform or Products to Customer, even when such Improvements result from Customer's request. To the extent, if any, that ownership in such Improvements does not automatically vest in 1Point by virtue of the Agreement or otherwise, Customer hereby transfers and assigns to 1Point all rights, title, and interest that Customer may have in and to such Improvements.

**5.3 Customer's Intellectual Property.** As between 1Point and Customer, Customer exclusively owns all rights, title and interest in and to all Data. In addition, all content created by Customer, or by 1Point for Customer during performance of the Services, including without limitation email templates, newsletters, distribution lists, links, images, graphs and photos (the "Work Product"), shall be the sole and exclusive property of Customer. 1Point agrees that it will not use the same Work Product created for Customer under this Agreement for another 1Point customer; provided, however, that nothing in the preceding sentence shall be interpreted to preclude 1Point from using the same functionality, format, code, design, concepts, workflows, integrations or other ideas represented in the Work Product, subject to 1Point's confidentiality obligations under this Agreement. 1Point collects usage data about any Customer whenever any Customer interact with our Services, which may include the dates and times the Services are accessed, browsing activities (such as what

portions of the Services are used). 1Point also collects information regarding the performance of the Services, including metrics related to the deliverability and usage of emails and other communications any Customer may send through the Services. For all other deliverables described in a Statement of Work which are not deemed Work Product, 1Point hereby grants Customer a limited, nonexclusive, nontransferable, revocable license to use such other deliverables during an applicable Subscription Term.

**5.4 Publicity;** Trademarks. Neither Party may issue press releases or any other public announcement of any kind relating to the Agreement without the other Party's prior written consent. Notwithstanding the foregoing, during an applicable Subscription Term, either party may include the names, trademarks and other logos of the other party (collectively the "Marks") in lists (including on its website) of customers or vendors in accordance with the other party's standard usage guidelines relating to its Marks. In addition, 1Point may use the Customer's Marks in connection with its authorized provision of the Platform and solely to the extent Customer has uploaded or incorporated such Marks into the form of communication to be delivered, and has initiated the distribution of the same, through its use of the Platform. Except as set forth herein, neither party may use the Marks of the other party without its prior written consent.

**5.5 Delivery and Filtering.** 1Point will use commercially reasonable efforts to deliver messages sent from the Site, Services, Platform and Product; however 1Point does not guarantee delivery. Internet Service Provider(s), third-party filtering services and other policies of the recipient service(s) may prevent successful delivery of Customer's message. Customer acknowledges that the limitations of said filtering service(s) will likely result in the capture of some legitimate messages and that the failure to capture some unwanted messages, including messages infected with viruses. 1Point is not responsible for any damages arising from the failure of the Site, Services, Platform or Product or for the failure of Customer's message being able to reach its intended recipient. 1Point does not guarantee message placement or any message delivery success, message delivery number(s), message delivery percentage(s), message open number(s), message open rate(s), message open percentage(s), message click number(s), message click rate(s) or message click percentage(s).

## **6. CONFIDENTIALITY**

**6.1 Definition of Confidential Information.** "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party") that (a) if disclosed orally is designated as confidential at the time of disclosure, (b) if disclosed in writing is marked as "Confidential" and/or "Proprietary", or (c) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall include, without limitation, the terms and conditions of the Agreement (including pricing and other terms reflected in all Order Forms and SOWs), the Data, business and marketing plans, technology and technical information, financial information, business strategies, practices, procedures, methodologies, know-how, product designs, and business processes. Confidential Information (except for Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party by the Receiving Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party; or (iv) is rightfully received from a third party not known by the Receiving Party to be subject to an obligation owed to the Disclosing Party.

**6.2 Confidentiality.** The Receiving Party shall use practices consistent with generally accepted industry standards to protect the security of Confidential Information it receives from the Disclosing Party and to prevent the disclosure or use any such Confidential Information for any purpose other

than to fulfill the purpose of the Agreement. Notwithstanding the foregoing: (a) the Receiving Party may disclose such Confidential Information to its employees and that prior to disclosure it will cause such employees and contractors to agree to be bound by terms and conditions of confidentiality substantially similar to those in this MSA; and (b) each party may disclose the existence and terms of the Agreement: (i) in confidence, to a potential purchaser of or successor to any portion of such party's business; (ii) to its attorneys, accountants and other advisors having a need to know the same; and (iii) if necessary to enforce its rights under the Agreement, provided that the Receiving Party uses reasonable efforts to limit such disclosure and to obtain confidential treatment of, or a protective order governing, the terms of the Agreement.

**6.3 Compelled Disclosure.** If the Receiving Party is requested to, or subject to a legal obligation to, disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with notice of the same as early as reasonably practical (if legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.4 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek immediate injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate. Customer acknowledges that 1Point is unable to guarantee absolute security of Data or Confidential Information and that 1Point has no liability to Customer for any unauthorized access or use of such Data or Information by a third party, or the corruption, deletion, destruction or loss of any such Data or Information, unless 1Point's security practices are below generally accepted industry standards.

**6.5 Survival.** Notwithstanding the expiration or termination of this MSA for any reason, the obligations of confidentiality and non-use set forth in this Section shall extend for a period of five years after such expiration or termination, except with respect to Data or to either party's trade secrets or to audit reports and findings belonging to 1Point's third party datacenters, all of which shall be held in confidence indefinitely.

## **7. WARRANTIES & DISCLAIMERS**

**7.1 Mutual Warranties.** Each party represents and warrants that: it has the legal power to enter into the Agreement; the signatory hereto has the authority to bind the applicable organization; and when executed and delivered, the Agreement will constitute the legal, valid, and binding obligation of each party, enforceable in accordance with its terms.

**7.2 1Point Warranties.** 1Point represents and warrants that: (a) the functionality and security of the Platform will not be materially decreased during the Term; (b) it will utilize software and other security means designed to prevent the Platform from containing or transmitting Malicious Code and to prevent unauthorized access to or use of the Data; (c) it owns or otherwise has sufficient rights in the Platform and Products to grant to Customer the rights to use the Platform and Products granted herein; (d) the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards; (e) the Site, Content, Platform, Products and Services will not infringe on any copyright, patent, trade secret or other proprietary right held by any third party; and (f) to the maximum extent permitted by law, 1Point provides the Site, Services, Platform and Product as-is. This means that, except as expressly stated in these Terms of Service / Master Services Agreement, 1Point does not provide warranties, conditions, or undertakings of any kind in relation to the Site, Services, Platform and or Product, either expressed or implied. This includes, but is not limited to, warranties of merchantability and fitness for a particular purpose, which are, to the fullest extent permitted by law, excluded from these Terms of Service / Master Services Agreement.

Since Customers use of the Site, Services, Platform and Product for a variety of reasons, 1Point cannot guarantee that it'll meet your specific needs.

**7.3 Customer Warranties.** Customer represents and warrants that: (a) the Data does not and will not infringe on any copyright, patent, trade secret or other proprietary right held by any third party and was not and will not be gathered or used by Customer in a manner that violates Applicable Law; (b) it will not use the Platform or any Product in a manner that violates Applicable Law; and (c) it will not upload to or send through the Platform or any Product any social security numbers, passport numbers, financial account numbers, or credit card information (as contemplated by the Payment Card Industry Data Security Standards), post, publish or transmit any text, graphics, or material that: (i) is false or misleading; (ii) is defamatory; (iii) invades another's privacy; (iv) is obscene, pornographic, or offensive; (v) promotes bigotry, racism, hatred or harm against any individual or group; (vi) infringes another's rights, including any intellectual property rights; or (vii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability, send unsolicited email, junk mail, "spam," or chain letters, or promotions or advertisements for products or services. Any violations under this Section may result in account termination for cause as expressly allowed in [Section 10.3](#) of this Agreement.

**7.4 International Use;** Prohibited by Law. In recognition of the global nature of the Internet, Customer agrees to comply with all local rules where Customer resides or where Customer organization is located regarding online activities, email and the Site or the Product. More specifically, but without limitation, Customer agree to comply with all applicable laws regarding the transmission of technical data exported to or from the United States or the country in which Customer resides. The Site or the Products are controlled and operated by 1Point from our offices within the United States (although 1Point may share data with third parties around the world to assist 1Point in providing the Site or the Products) and 1Point makes no representation that the Site or the Products are appropriate or available for use in other locations. Those who access the Site or the Products from other locations do so at their own initiative and risk, and are fully responsible for compliance with all applicable laws in those locations. Content sourcing management allows 1Point and customer to jointly and/or individually collect and use behavioral data. 1Point does not offer the Site or the Products where prohibited by law.

**7.4.1 Digital Millennium Copyright Act Compliance.** Customer represents and warrants that: Customer will only upload, post, submit or otherwise transmit data and/or files: (i) that Customer has the lawful right to use, copy, distribute, transmit, or display; or (ii) that does not infringe the intellectual property rights or violate the privacy rights of any third party (including, without limitation, copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity). 1Point has adopted and implemented a policy that permits the deletion of files that violate this policy, and that permits the termination in appropriate circumstances of the accounts of users who repeatedly infringe or are believed to be or are charged with repeatedly infringing the rights of copyright holders. Any violations under this Section may result in account termination for cause as expressly allowed in [Section 10.3](#) of this Agreement.

**7.4.2 Canadian Anti-Spam Legislation (CASL).** Customer acknowledges it is their obligation to conform to CASL regulations. To that end, customer agrees explicitly to abide by all provisions of the Canadian Law relative to email. Any violations under this Section may result in account termination for cause as expressly allowed in [Section 10.3](#) of this Agreement.

Further, in addition to the Indemnification provision in [Section 8](#) below, Customer further acknowledges that Customer is solely responsible for conforming to CASL regulations and



accordingly indemnifies 1Point against any breach of CASL that may be caused by Customer's use of the 1Point platform, including but not limited to the payment of any fines.

**7.4.3 General Data Protection Regulation (GDPR).** For the purpose of European Directive 95/46/EC, the General Data Protection Regulation 2016/679) (once in effect) ("GDPR") and any applicable national implementing laws in Customer's jurisdiction, and with respect to Customer's subscribers' or customers' personal data, Customer acknowledges and agrees that you as the Customer are the Controller (as that term is defined in the GDPR), and 1Point is the Processor (as that term is defined in the GDPR) of such personal data. Customer also acknowledges and agrees that Customer is responsible for complying with all obligations of a data controller under applicable law (including the GDPR).

To the extent that DGPR applies to Customer, Customer represent and warrants that in using 1Point Services, Customer will clearly describe in writing how you (the Customer) plan to use any personal data collected and Customer will ensure that customer has a legitimate legal basis to transfer such personal data to 1Point and that Customer has the necessary permission to allow 1Point to receive and process personal data and send communications to that individual on Customer's behalf. The additional data processing terms set forth in the data-processing-agreement (<https://www.1pointinteractive.com>) shall apply where Customer is a Controller subject to the GDPR.

Further, in addition to the Indemnification provision in Section 8 below, Customer further acknowledges that it is solely responsible for conforming to Controller's obligations under GDPR regulations and accordingly indemnifies 1Point against any breach of GDPR that may be caused by Customer's use of the 1Point platform, including but not limited to the payment of any fines.

**7.5 Disclaimer.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, 1POINT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICES, PLATFORM AND PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 1POINT DOES NOT WARRANT THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING THE SERVICES OR USING THE PLATFORM OR ANY PRODUCT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE PLATFORM OR ANY PRODUCT, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY 1POINT.

## **8. INDEMNIFICATION**

**8.1 By 1Point.** 1Point shall defend, indemnify and hold Customer, its Affiliates, and their respective officers, directors, agents and employees, harmless against any loss, damage or costs (including reasonable attorneys' fees) ("Losses") incurred in connection with any claim, demand, suit or proceeding ("Claim") made or brought against Customer by a third party relating to: (a) 1Point's violation of Applicable Law in (i) providing the Services or (ii) making the Site, Content, Services, Platform and/or Products available to Customer; (b) a breach by 1Point of the confidentiality obligations set forth in Section 6; and/or (c) Customer's use of the Site, Content, Services, Platform or any Product in a manner permitted by the Agreement that infringes the intellectual property rights of such third party; provided, however, that 1Point shall have no such indemnification obligation if the Claim relates (i) to a third-party Product made available through the Platform or (ii) to use of the Platform or an 1Point Product in combination with Data, Marks, software, data products, processes,

or materials not provided by 1Point and the infringement would not have occurred but for the combination.

**8.2 By Customer.** Customer shall defend, indemnify, and hold 1Point, its Affiliates, and their respective officers, directors, agents and employees, harmless against any loss, damage or costs (including reasonable attorney's fees) ("Losses") incurred in connection with any claim, demand, suit or proceeding ("Claim") made or brought against 1Point by a third party alleging that: (a) Customer's use of the Site, Content, Services, Platform and /or any Product is violating Applicable Law or the Agreement; (b) a breach by Customer of the confidentiality obligations set forth in Section 6; (c) Data, and/or any materials provided to 1Point necessary to perform the Services, infringe upon or violate the intellectual property, privacy, or other rights of a third party. Customer acknowledges and understands that the Site, Services, Platform and Product include the transmission of unencrypted email in plain text over the public internet. Customer is responsible for encrypting any sensitive data used in conjunction with the Site, Services, Platform or any Product. Email sent using aforementioned may be unsecured, may be intercepted by other users of the public internet, and may be stored and disclosed by third parties (such as a recipient's email service provider). Although the Site, Services, Platform and any Product include support for TLS (Transport Level Security), content may be transmitted even if the recipient does not also support TLS, resulting in an unencrypted transmission.

**8.3 Procedure.** As an express condition to the indemnifying party's obligation under this Section 8, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought; provided, however, that any delay in notification shall not relieve the indemnifying party of its obligations hereunder except to the extent that the delay materially impairs its ability to defend the applicable Claim or perform its indemnification obligations hereunder; and (b) provide the indemnifying party with all non-monetary assistance, information and authority reasonably required for the indemnifying party to defend and settle such Claim. The indemnifying party may select counsel of its choice to defend the Claim and direct the course of any litigation or other disputed proceedings concerning the Claim. The indemnified party may select its own counsel and direct its own defense of a Claim if it chooses to do so, but it must bear the costs of its own counsel and any activities in any disputed proceeding conducted by counsel of its choosing. The indemnifying party may settle any Claim, with the consent of the indemnified party, such consent not to be unreasonably withheld, conditioned or delayed.

## **9. LIABILITY LIMITATIONS**

**9.1 LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE SUMS PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL CUSTOMER'S LIABILITY TO 1POINT BE LESS THAN THE SUM OF ALL OUTSTANDING FEES AND EXPENSES OWED BY CUSTOMER OR ANY CUSTOMER AFFILIATE PLUS ALL INTEREST AND COLLECTION COSTS ASSOCIATED THEREWITH. NOTWITHSTANDING THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY, AND 1POINT'S ENTIRE LIABILITY, FOR ANY BREACH OF THE WARRANTIES IN SECTION 7.2(D) IS LIMITED TO RE-PERFORMANCE OF THE SERVICES. IF 1POINT IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED WITHIN 30 DAYS OF RECEIPT OF WRITTEN NOTICE OF BREACH, CUSTOMER SHALL BE ENTITLED TO RECOVER THE FEES PAID TO 1POINT FOR THE DEFICIENT SERVICES.

**9.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOSS OF GOODWILL), WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10. TERM & TERMINATION**

**10.1 Term of MSA.** This MSA commences on the Effective Date and continues until the termination or expiration of all Subscription Terms specified in all Order Forms and/or Online Subscription Form and/or of the terms specified in all SOWs (the "Term").

**10.2 Term of Subscriptions.** Subscriptions to the Platform or a Product commence on the Start Date and continue for the Subscription Term specified in the applicable Order Form or Subscription. Unless otherwise set forth in an Order Form or Subscription, Subscriptions shall automatically renew for additional periods the Subscription Term each for the fees set forth in the applicable Order Form or Subscription unless either party gives the other notice of non-renewal at least 30 days prior to the end of the then-current Subscription Term.

**10.3 (A) Termination for Convenience.** Customer may terminate this Agreement (or any SOW or Subscription), in whole or in part, without penalty, at any time and for any reason, by providing at least thirty (30) days prior written notice to 1Point, provided that 1Point shall be entitled to charge the termination for convenience fees that are expressly set forth in the applicable SOW or Subscription, if any.

**(B) Termination for Cause; Surviving Provisions.** 1Point may, at our sole discretion, terminate Customer's account or Customer's access to the Paid Account or use of the Site or the Product(s), disable Customer's account or disable access to the Site or the Product(s), remove all or a portion of Customer's contacts and content, cancel or suspend any of Customer's events, or put Customer's account on an inactive status, in each case at any time, with or without cause, with or without notice and without refund.

1Point shall have no liability to Customer or any third party if such termination or action, except that 1Point will refund a pro rata portion of any prepaid amounts if 1Point terminates Customer without cause.

After termination, Customer shall process all unsubscribe requests within 30 days of Customer's last email campaign. Upon request within 30 days of Customer's termination, 1Point will provide the list of unsubscribe requests from Customer's account to Customer. Under the CAN-SPAM Act and Canada's Anti-Spam Legislation, Customer acknowledges that Customer is responsible for maintaining and honoring unsubscribe requests following termination of Customer's account and this Agreement.

If Customer's account is classified (at 1Point's sole discretion) as inactive for over 120 days, 1Point has the right to permanently disable and or delete Customer's account.

**10.4 Surviving Provisions.** Section 1 and Sections 4 through 11 shall survive any termination or expiration of this Agreement, regardless of the cause of termination.

## **11. GENERAL PROVISIONS**

**11.1 Relationship of the Parties;** Third Party Beneficiaries. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Unless otherwise provided in an Addendum, there are no third-party beneficiaries to the Agreement.

**11.2 Force Majeure.** Neither party is responsible for delays or failures to perform its responsibilities under the Agreement due to causes beyond its reasonable control, including but not limited to acts of God, acts of government, flood, fire, earthquakes, tornadoes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems, Malicious Code, denial of service attacks, and inability to obtain energy (each a "Force Majeure Event"); provided, however, that it will resume performance as soon as reasonably practicable.

**11.3 Notices.** Any notice, request, approval or written consent required under the Agreement shall be sufficiently given if in writing and delivered in person or mailed (certified or registered mail, return receipt requested) by one party to the other at the address set forth on the first page hereof or to such other address as the recipient may subsequently furnish in writing to the sender. Notices to 1Point shall be addressed to the attention of its General Counsel. Notices to Customer shall be addressed to Customer's signatory of this MSA unless otherwise designated in writing. Notice shall be effective upon receipt.

**11.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**11.5 Severability.** Any provision of the Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without (a) invalidating the remaining provisions hereof if the essential provisions of the Agreement for each party remain valid, binding, and enforceable, or (b) affecting the validity or enforceability of such provisions in any other jurisdiction.

**11.6 Assignment.** Neither party may assign the Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign the Agreement in its entirety (including all Order Forms and SOW(s)), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to affect an assignment in breach of this Section shall be void. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.7 Governing Law; Venue; JURY TRIAL WAIVER.** The Agreement, and all claims arising out of or relating to its subject matter, shall be exclusively governed by and construed under the internal laws of the State of Indiana, without regard to its conflicts of laws rules. Each party consents to the exclusive jurisdiction of the state and federal courts located in Marion County (Indianapolis), Indiana to adjudicate any claim arising out of or relating to the Agreement or its subject matter. EACH PARTY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER.

**11.8 Attorneys' Fees.** If either party hereto files a legal proceeding arising out of or relating to the Agreement or its subject matter, the prevailing party (as adjudged by a court or other fact finder)

shall be entitled to an award of all costs and expenses incurred in connection with such proceeding, including but not limited to reasonable attorneys' fees and expert witness fees.

**11.9 Entire Agreement.** The Agreement, as defined herein, constitutes the entire agreement between the parties with respect to the subject matter set forth in the Order Forms and SOWs executed by the parties during the Term, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of the Agreement shall be effective unless in writing and signed by both parties hereto. To the extent of any conflict or inconsistency between the provisions in the body of this MSA and any Addendum, Exhibit, Order Form, or SOW, the terms of this MSA shall prevail unless expressly stated otherwise in such Addendum, Exhibit, Order Form, or SOW. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms and SOWs) shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void. The language used in this MSA shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either party shall apply to rights granted herein or to any term or condition of this MSA. In the event of any asserted ambiguous term or condition herein, the parties agree that the principle that ambiguities shall be construed against the drafter shall not be employed. Each party represents and warrants that, in deciding to execute the Agreement, it has not relied and should not rely on any understandings, representations, inducements, warranties or promises, whether written or oral and/or whether express or implied, regarding the Agreement, the matters referenced in the Agreement or any other matters not referenced in the Agreement. Each party represents and warrants that it did not enter the Agreement based on any representation or omission of any other party or its agents, and that any term not present in the Agreement was not material to its decision to enter into the Agreement.

**11.10 Counterparts.** This MSA may be executed in counterparts, which taken together shall form one legal instrument. Delivery of an executed counterpart signature page of this MSA by facsimile, email, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this MSA.

Updated 6/22/2021